

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Peggy M. Winninger,
Petitioners-Appellants,

v.

Black Hawk County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-07-1573
Parcel No. 8914-11-478-005

On May 22, 2013, the above-captioned appeal came on for hearing before the Iowa Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. Petitioner-Appellant Peggy Winninger was represented by Ted Winninger. Assistant County Attorney David Mason represented the Board of Review. The Appeal Board now having examined the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

Peggy Winninger is the owner of property located at 821 College Street, Cedar Falls, Iowa. The real estate was classified residential on the January 1, 2011, assessment and valued at \$211,320, representing \$31,850 in land value and \$179,470 in improvement value. Winninger protested the assessment to the Black Hawk County Board of Review on the grounds that the assessment was not equitable as compared with the assessments of other like property under Iowa Code section 441.37(1)(a)(1) and that the property was assessed for more than authorized by law under section 441.37(1)(a)(2). She believed the correct market value was \$163,120. The Board of Review denied the protest.

Winninger then appealed to this Board reasserting her claims.

The property record card indicates the subject is a two-story home, built in 1890. It has 2264 square-feet of above grade living area, and a full, unfinished basement. There is a 1008 square-foot, detached garage built in 1992. Additionally, there are two enclosed porches and a 438 square-foot deck. The site is 0.303 acres.

In a written statement, Winninger explains she purchased the property in 2009 for \$120,000. The assessor inspected the property in 2010, and at that time, it was reassessed for \$150,000. Winninger asserts the “2011 assessed value should use the 2010 assessment as a base.” Based on Winninger’s calculations, this would result in a 2011 assessment of \$162,000 to \$165,000.

Winninger states that the neighboring property at 909 College is a similar aged home (built 1893) but its assessment went up less than her assessment. She asserts that property had \$45,000 in improvements. Additionally, she notes it has 70% more finished square feet than her property and the lot is 70% larger. She believes her assessment, compared to 909 College, should be closer to \$162,000. Winninger did not provide any other information about 909 College, such as a property record card, its assessed value, or the fair market value.

Lastly, Winninger provided a 2009 settlement statement showing the sales price of \$120,000. We do not find this statement to be helpful in determining a fair market value of the subject property in 2011.

The Board of Review provided a letter dated March 12, 2013, prepared by Deputy Assessor Tami McFarland. The letter explains that a complete residential revaluation was done in 2011 using the Department of Revenue’s 2008 IOWA REAL PROPERTY APPRAISAL MANUAL. The letter also stated that McFarland believes Winninger’s 909 College comparable is a superior property and not a recent sale. She supplied a list of 909 College’s features for comparison to the subject to support her opinion. For these reasons she does not consider it a reasonable comparable property for either an equity or market value claim.

The letter also included a comparable sales analysis. McFarland provided three properties for comparison, all located in the same area as the subject property. They are located at 1021 Tremont Street; 1109 Tremont Street; and 910 Washington Street. She states that the unadjusted sale prices of the three properties ranges from \$46.82 to \$147.85, with a median sale price of \$89.95. She applied the median, unadjusted sale price to the subject properties total living area of 2264 to arrive at a value of approximately \$203,650. Based on this analysis, McFarland concedes the assessed value is too high and that she believes the correct value should be \$203,000. We hesitate to rely on unadjusted sales to prove over assessment; however, McFarland also provided a grid with the subject property and adjusted the comparable properties for differences. We note that the adjustments appear to be cost-based rather than based on market actions, but after adjustments, the properties have indicated values ranging from \$167,770 to \$220,350. Absent other evidence, we find the Board of Review's and McFarland's concession that the subject property is over assessed and should be assessed at \$203,000.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available to determine market value then "other factors," such as income and/or cost, may be considered. § 441.21(2). The property's assessed value shall be one hundred percent of its actual value. § 441.21(1)(a).

To prove inequity, a taxpayer may show that an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The six criteria include evidence showing

(1) that there are several other properties within a reasonable area similar and comparable . . . (2) the amount of the assessments on those properties, (3) the actual value of the comparable properties, (4) the actual value of the [subject] property, (5) the assessment complained of, and (6) that by a comparison [the] property is assessed at a higher proportion of its actual value than the ratio existing between the assessed and the actual valuations of the similar and comparable properties, thus creating a discrimination.

Id. at 579-580. The *Maxwell* test provides that inequity exists when, after considering the actual and assessed values of comparable properties, the subject property is assessed at a higher proportion of this actual value. *Id.* The *Maxwell* test may have limited applicability now that current Iowa law requires assessments to be at one hundred percent of market value.

§ 441.21(1). Nevertheless, in some rare instances, the test may be satisfied. Winninger offered only one comparable property for an equity claim. The Iowa Supreme Court has interpreted “representative number of comparable properties” to be more than one property. *Maxwell*, 257 Iowa at 581, 133 N.W.2d at 712. This “statutory requirement is both a jurisdictional prerequisite and an evidentiary requirement for bringing a claim of inequitable or discriminatory assessment before the board.” *Montgomery Ward Dev. Corp. by Ad Valorem Tax, Inc. v. Cedar Rapids Bd. of Review*, 488 N.W.2d 436, 441 (Iowa 1992). Because Winninger only provided one equity comparable, she failed to prove her inequity claim.

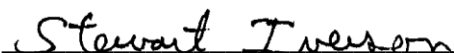
In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the appellant has a two-fold burden. *Boekeloo v. Bd. of Review of the City of Black Hawk*, 529 N.W.2d 275, 277 (Iowa 1995). First, the appellant must show that the assessment is excessive. Iowa Code § 441.21(3); *Boekeloo*, 529 N.W.2d at 276-77. Second, the appellant must provide evidence of the property’s correct value. *Boekeloo*, 529 N.W.2d at 276-77. Winninger did not provide any evidence regarding the subject property’s correct market value as of January 1, 2011. However, the Board of Review provided a letter and a sales comparison analysis from Deputy Assessor Tami McFarland that concedes the property is over assessed and suggests that \$203,000 is a more appropriate assessment. Based on this concession, we find the subject property is over assessed and modify the assessment.

THE APPEAL BOARD ORDERS the assessment of Peggy M. Winninger's property located at 821 College Street, Cedar Falls, Iowa, is modified to a total value of \$203,000, allocated as \$31,850 in land value and \$171,150 in improvement value as of January 1, 2011. The Secretary of the Property Assessment Appeal Board shall mail a copy of this Order to the Black Hawk County Auditor and all tax records, assessment books and other records pertaining to the assessments referenced herein on the subject parcels shall be corrected accordingly.

Dated this 6th day of May 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



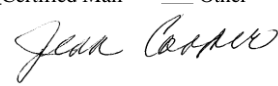
Jacqueline Rypma, Board Member

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AUDITOR

Certificate of Service	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on <u>May 6, 2013</u> .	
By:	<input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> FAX
	<input type="checkbox"/> Hand Delivered <input type="checkbox"/> Overnight Courier
	<input type="checkbox"/> Certified Mail <input type="checkbox"/> Other
	
Signature _____	